

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed February 22, 2008. Claims 1 and 17 are amended. Claims 1-23 are now pending in view of the above amendments. Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant's request that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. PRIOR ART REJECTIONS

I. Rejection Under 35 U.S.C. §102 and §103

The Office Action rejected claims 1-4, 6-11, and 15-17 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,488,692 (*Spence*). Claims 5, 12-14, and 18-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Spence* in view of U.S. Patent No. 5,904,697 (*Gifford*). *Spence* was cited as disclosing "a device for engaging tissue (entire document) comprising a generally movable annular-shaped body disposed about a central axis, a plurality of expandable (between and expandable and compressed state) looped elements . . ." (Office Action page 2). *Gifford* was cited as disclosing the use of superelastic alloys and connector elements (Office Action pages 3 and 4). Because *Spence* does not teach or suggest each and every element of the rejected claims, Applicants respectfully traverse this rejection in view of the following remarks.

Spence discloses "an access and cannulation device [that] includes a mounting element" (Abstract). The ring disclosed in *Spence* in Figures 7-9F is "a malleable ring MR [that] includes

a plurality of arcuate sections MS with apexes MA on which tines MT are located. . . . Ring MR is malleable and has little material memory" (Col. 8, ll. 12-16)(emphasis added).

In direct contrast, independent claims 1 and 17 recite, in part, "a generally annular-shaped body defining a plane and disposed about a central axis extending substantially normal to the plane, . . . the body being biased to return toward the planar configuration from the transverse configuration, the body comprising a plurality of looped elements comprising alternating first and second curved regions." A ring that has "little material memory" does not appear to be the same as "a body biased to return to the planar configuration" as claimed in independent claims 1 and 12. Since *Spence* does not teach the device being claimed in this application, Applicants respectfully request that the rejection under 35 U.S.C. § 102(b) be withdrawn.

With respect to the combination of *Spence* and *Gifford*, Applicant respectfully submits that there is not teaching, suggestions, or reason to combine those disclosures. In fact, as discussed above, *Spence* teaches away from the combination because *Spence* teaches that the "[r]ing MR is malleable and has little material memory" (Col. 8, line 16). One skilled in the art would not look to add a superelastic material, such as that of *Gifford*, with a device that teaches that the device should have "little material memory". It appears that the proposed modification of *Spence* with that of *Gifford* changes the principle of operation of the device of *Spence*, i.e., changing a malleable material with "little material memory" to a superelastic material with material memory. (See MPEP 2143.01). Applicant respectfully submits that independent claims 1 and 17 are neither taught nor suggested by *Spence* and *Gifford*, whether alone or in combination. Since both *Spence* and *Gifford*, whether alone or in combination, neither teach nor suggest the inventions of independent claim 1 and 17, Applicant submits that dependent claims 2-16 and 18-23 are not rendered obvious by *Spence* and *Gifford*.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any

of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 21st day of August, 2008.

Respectfully submitted,

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